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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54 Federal Communications Commission
Office of Secretary

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To: The Commission

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COMMENTS OF BELL SOUTH

BellSouth Corporation ("BellSouth"), by its attorneys, hereby submits these comments in response to the Commission's *Third Notice of Proposed Rule Making*, FCC 96-284 (Aug. 15, 1996) ("*TNPRM*"), summarized, 61 Fed. Reg. 20949 (Apr. 28, 1995) in this docket. Specifically, BellSouth opposes the Commission's proposal to adopt an automatic roaming requirement. Adoption of such a requirement is inconsistent with Congressional intent behind the Telecommunications Act of 1996 and the FCC policy of allowing the marketplace, rather than regulation, to dictate the development of the wireless marketplace. Moreover, adoption of an automatic roaming requirement will increase costs to end users. Thus, it would be inappropriate to adopt such a requirement absent assurance that the benefits to the public outweighed the increased costs to end users that would result from the requirement. Finally, should the Commission nevertheless decide to adopt its proposed automatic roaming requirement, it should be narrowly focused and limited in duration.

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List A B C D E

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I. AN AUTOMATIC ROAMING REQUIREMENT IS INCONSISTENT WITH THE GOAL OF THE TELECOM ACT AND THE FCC'S GOAL OF ALLOWING THE MARKETPLACE, RATHER THAN REGULATION, TO DICTATE WIRELESS SERVICE OFFERINGS

In passing the Telecommunications Act of 1996,¹ Congress intended to create a “pro-competitive, de-regulatory national policy framework.”² In this regard, Section 403 of the Telecom Act eliminated unnecessary Commission regulations and functions.³ Further, Section 10 was added to the Communications Act for the purpose of giving the Commission express authority to forbear from applying existing regulations if:

- (1) enforcement of such regulation or provision is not necessary to ensure that the rates, charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.⁴

Accordingly, the Commission should not enforce, indeed should not enact, any regulations which are unnecessary to protect consumers or ensure that rates are just and reasonable. To date, no record exists indicating that an automatic roaming requirement is necessary to protect consumers.

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996).

² H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Session 113 (1996). *See NPRM* at ¶ 27.

³ 110 Stat. at 130-32.

⁴ 110 Stat. at 128-29, *codified at* 47 U.S.C. § 160.

Moreover, the FCC has consistently stated that its general policy is to “allow[] market forces, rather than regulation, to shape the development of competition.”⁵ The FCC should follow its policy and Congressional mandate to let market forces shape the development of CMRS roaming arrangements. There has never been an automatic roaming requirement and there is no need to adopt such a requirement for CMRS at this time. Moreover, the existing nationwide seamless cellular roaming system was developed largely without any active involvement of the FCC, in response to the demands of the marketplace and developments in technology. There is no reason to believe that regulatory action is necessary to encourage the wide availability of roaming service either in other CMRS services or among the different CMRS services.

New CMRS entrants are just beginning to operate and there is no evidence of discriminatory practices. *TNPRM* at ¶ 20. Without such a record, there is no need to adopt an automatic roaming requirement. Cellular carriers receive significant revenues from roamers, approximately \$1.4 billion in 1995.⁶ Thus, it is in their interest to continue negotiating roaming arrangements with other CMRS carriers, which would increase this revenue stream. Until multi-mode, multi-band phones (*i.e.*, analog to digital, cellular to PCS) become commercially available at reasonable cost, however, there cannot be a meaningful market for roaming between CMRS systems using different technologies.

⁵ See *TNPRM* at ¶ 26; *Implementation of Section 302 of the Telecommunications Act of 1996 — Open Video Systems*, CS Docket No. 96-46, *Second Report and Order*, FCC 96-249, ¶ 106 (June 3, 1996); *WNYC Communications Group*, 3 Comm. Reg. (P&F) 400, ¶ 11 (Video Serv. Div. 1996); *Implementation of Sections of the Cable and Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-266, *Report and Order and Further Notice of Proposed Rulemaking*, 8 F.C.C.R. 5631, ¶ 327 (1993); *Intelligent Networks*, CC Docket No. 91-346, *Notice of Inquiry*, 6 F.C.C.R. 7256, ¶ 14 (1991).

⁶ Donaldson, Lufkin and Jenrette, Summer 1996, *The Wireless Communications Industry*, at 8, Table I.

Some of these phones will become available in early 1997, but it will be sometime before multi-mode, multi-band phones will be deployed.

II. AN AUTOMATIC ROAMING REQUIREMENT WILL INCREASE FRAUD AND ADMINISTRATIVE BURDENS

One of the biggest problems facing cellular carriers today is fraud prevention. Fraud currently costs cellular carriers \$750 million per year. Although new methods of fraud detection are being developed, they are not yet available in all markets nor are they compatible with all technologies. It is for this reason that many cellular carriers are becoming more careful in how they structure automatic roaming agreements. Requiring cellular providers to offer automatic roaming to other types of CMRS providers will substantially increase fraud detection problems.

Although automatic roaming is prevalent in cellular, it is safer to offer manual roaming because it requires the caller to establish a payment mechanism and ensures reimbursement for the call.⁷ One common form of manual roaming is credit card calling where the caller is directed to an independent vendor that obtains credit card information from the caller in order to process the call. Under automatic roaming, there still is an opportunity for fraudulent calls to be placed, even when state-of-the-art fraud detection and validation systems have been implemented. Thus, a cellular carrier cannot always determine if a call placed from a mobile phone is authentic or fraudulent. This problem is magnified if, in addition to its own subscribers, it must provide automatic service to all CMRS subscribers attempting to place calls on its system.

⁷ The FCC's recent Order in this docket ensures that all subscribers will have access to manual roaming, regardless of the type of service to which they subscribe, provided the customer's phone is compatible with the foreign licensee's.

The risk of fraud varies by market and market size. Providers need flexibility to tailor their roaming arrangements accordingly. Further, because there is no automatic roaming requirement in cellular, cellular providers periodically limit automatic roaming agreements with carriers located in markets with high levels of fraud. Imposing an automatic roaming requirement eliminates this possibility and will dramatically limit carriers' ability to combat fraud.

Moreover, under certain conditions, cellular providers "brown out" roaming with specific carriers as a fraud prevention mechanism. Under this mechanism, a cellular carrier subject to a high incidence of fraud may request, as a last resort, that other carriers temporarily stop providing automatic roaming to subscribers (manual roaming remains available). Until foolproof fraud detection mechanisms have been developed and tested, carriers must retain their ability to "brown out" when necessary.

Finally, if an automatic roaming requirement is imposed, all CMRS carriers will be forced to incur additional network costs to upgrade administrative systems. At a minimum, providers will need to increase the capacity of their roaming tables. CMRS providers also will likely have to create enhanced billing systems to handle the increased demand from a variety of providers and will have to develop and implement new, more extensive fraud prevention mechanisms. These additional costs will ultimately be borne by wireless customers.

III. IF AN AUTOMATIC ROAMING REQUIREMENT IS ADOPTED, IT SHOULD BE LIMITED IN DURATION AND SCOPE AND OTHERWISE CLARIFIED

A. Any Automatic Roaming Requirement Should Sunset After Five Years

Consistent with the Commission's decision relating to resale,⁸ any automatic roaming requirement should sunset five years after the current D, E, and F Block PCS auctions conclude.⁹ Any perceived need to require automatic roaming must be balanced against the public interest of encouraging the aggressive build-out of new networks. In PCS, for example, the Commission indicated that it sought to optimize and balance four factors in establishing PCS: universality; *speed of deployment*; diversity of services; and competitive delivery.¹⁰ According to the Wireless Telecommunications Bureau, speed of deployment was of paramount concern to the Commission in PCS.¹¹

An automatic roaming requirement gives a new entrant both the opportunity and incentive to delay building out its system. Rather than expend the resources necessary to promptly build-out its system, the new entrant can build a shell system because its customers will be able to roam on other compatible CMRS systems in the area. To ensure prompt build-out, the Commission should

⁸ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, CC Docket No. 94-54, *First Report and Order*, 3 Comm. Reg. (P&F) 895 (1996).

⁹ The sunset should be tied to conclusion of the D, E, and F auction, rather than issuance of the final PCS license, because there may be a number of licenses that need to be reauctioned. See "18 Defaulted PCS Licenses to be Reauctioned," FCC Public Notice, DA 96-872 (May 30, 1996). The vast majority of PCS licenses will have been awarded, however, and licensees should be provided a date certain sunset.

¹⁰ See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd. 7700, 7702 (1993) (subsequent history omitted).

¹¹ See *Order*, DA 95-806 (W.T.B. Apr. 12, 1995).

allow a CMRS licensee to deny automatic roaming to customers of other CMRS providers five years after the on-going D, E, and F Block PCS auctions conclude.

B. If An Automatic Roaming Requirement Is Adopted, It Should Require Non-Discrimination Among Similarly Situated Carriers *Only*

BellSouth supports the Commission's tentative conclusion that if an automatic roaming requirement is adopted, it would only prevent the denial of automatic roaming to similarly situated providers and that not all carriers are similarly situated.¹² Because roaming rates largely depend upon administrative costs and fraud-related issues, the Commission should clarify that the roaming rate charged to an affiliated carrier need not be the same as the rate charged to another CMRS provider because they are not similarly situated. There are few additional administrative costs associated with providing roaming to an affiliate and the fraud risk is well known. Conversely, the provision of roaming to a non-affiliate requires a fraud risk assessment and the establishment of a billing and collection mechanism.

At a minimum, the Commission should make clear that roaming agreements can differ among carriers based on unique factors such as fraud risk, market size and location, volume, features, and the type of interfaces.

C. Resellers Should Not Be Entitled To Automatic Roaming

Resellers maintain a unique relationship with the providers of wireless services. Specifically, they enter into contractual relationships with wireless providers which permit the resale of various services. CMRS carriers, however, do not generally enter into contractual relationships except with regard to roaming. Rather than require wireless providers to enter into numerous negotiations with

¹² *TNPRM* at ¶ 22.

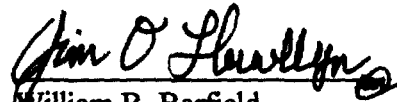
resellers regarding all aspects of CMRS, the Commission should clarify that resellers are merely entitled to roaming as provided for in their resale agreement. CMRS providers should not be required to revisit each resale agreement and "unbundle" the resale and roaming aspects of the arrangement. If a reseller desires roaming capabilities, it is free to negotiate these capabilities with the wireless provider whose service it is reselling so that its customers roam as if they were customers of the wireless provider. In other words, the reseller would "piggy back" on the wireless provider's pre-existing roaming arrangements.

CONCLUSION

For the aforementioned reasons, BellSouth urges the Commission not to adopt an automatic roaming requirement. Should the Commission nevertheless decide to adopt its proposed automatic roaming requirement, however, it should be limited in duration and scope.

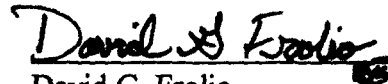
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